

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Electronically Filed)**

SURGIBIT IP HOLDINGS PTY. LIMITED)	
-and-)	
ORTHOPEDIC INNOVATION PTY. LTD.)	
)	
Plaintiffs)	
)	Civil Action No. 1:13-cv-8839
vs.)	Judge CHARLES R. NORGLER, SR.
)	Magistrate-Judge GERALDINE SOAT BROWN
ORCHID ORTHOPEDIC SOLUTIONS, LLC)	
-and-)	
LIAM PATRICK ELLIS)	
-and-)	
CINGULAR PTY. LTD.)	
)	
Defendants)	

PLAINTIFFS' MOTION TO ENTER LIQUIDATED JUDGMENT

Plaintiffs, Surgibit IP Holdings Pty. Limited (“Surgibit”) and Orthopedic Innovation Pty. Ltd. (“OI”)(collectively, “Plaintiffs”), by counsel, hereby move the Court to enter a liquidated Final Judgment against Defendants Liam Patrick Ellis (“Mr. Ellis”) and Cingular Pty., Ltd. (“Cingular”) in the amount of \$ 985,527.61. As grounds for this motion, Plaintiffs submit the following argument and accompanying proof in the form of the Declaration of John Wilson (Exhibit 1 filed herewith), and respectfully state:

1. Judgment was entered against Mr. Ellis and Cingular on June 20, 2014 (Dkt. 44), which *inter alia* held
 - a. The CingleBit product made and sold by or on behalf of Mr. Ellis and/or Cingular infringed at least one claim of each of the Patents-in-Suit;
 - b. Infringement by Mr. Ellis and Cingular was willful.
 - c. Damages for such infringement were set at \$5.00 per infringing CingleBit (or any other product with the same or colorably indistinct geometry on its cutting tip), plus prejudgment interest at the prime rate from the beginning of Mr. Ellis’ and/or Cingular’s infringement until date of Judgment;

- d. Because, *inter alia*, Mr. Ellis' and Cingular's infringement was willful, Plaintiffs were entitled to recover three times actual damages;
- e. Mr. Ellis and Cingular and those in active concert or participation with them were enjoined against further infringement of any Patent-in-Suit; and
- f. Plaintiffs were entitled to recover their attorney fees incurred in this action.

2. The Judgment of June 20, 2014 (Dkt. 44) allowed Plaintiffs to conduct post-judgment discovery and upon completion to file a Supplemental Judgment liquidating their damages reward and also setting forth the amount of attorney fees recoverable.

3. A Supplemental Judgment (Dkt. 48) was entered on June 26 specifying that the injunction against infringement prohibited advertising of "CingleBit" product within the United States.

4. Based on the post-Judgment discovery, as set forth in the attached Declaration of John Wilson (§ 8), the total number of CingleBit product (or any other product with the same or colorably indistinct geometry on its cutting tip) sold in the USA was 41,181. Based on the adjudicated damages of \$5.00 per unit, total damages = \$205,905.00. Trebling that sum = \$617,715.00 in total damages owed by Mr. Ellis and Cingular to Plaintiffs.

5. Based on the Declaration of John Wilson (§ 9), the total attorney fees incurred by Plaintiffs in this action is \$ 374,365.10, which amount is submitted to be reasonable.

6. Based on the Declaration of John Wilson (§ 11), the amount of pre-judgment interest at the "WSJ Prime Rate" payable by Mr. Ellis and Cingular to Plaintiffs is \$ 17,790.18.

7. Based on the (proposed) Bill of Costs filed by Plaintiffs (Declaration of John Wilson, Exhibit C), Plaintiffs' recoverable costs in this action are \$ 3,610.00.

8. The total amount recoverable by Plaintiffs from Mr. Ellis and Cingular, jointly and severally, is \$ 1,013,570.28.

CONCLUSION

Given the entirety of the Record in this action, Plaintiffs are entitled to a final, liquidated Judgment against Mr. Ellis and Cingular, jointly and severally, in the amount of \$ 1,013,570.28 plus interest thereon at the WSJ Prime Rate until paid in full.

In accordance with Local Rules and the Rules of this Court, Plaintiffs have tendered to the Court (c/o: Eric.Fulbright@ilnd.uscourts.gov) a proposed form of Final Liquidated Judgment Against Cingular Pty, Ltd. and Liam Patrick Ellis, and also Plaintiffs' Proposed Bill of Costs.

Respectfully submitted,

Date: November 19, 2014

s/James R. Higgins, Jr.

James R. Higgins, Jr. (Member N.D. Ill. Bar)
Robert J. Theuerkauf (Member N.D. Ill. Bar)
Brantley C. Shumaker (Member N.D. Ill. Bar)

MIDDLETON REUTLINGER

401 South 4th Street, Suite 2600

Louisville, KY 40202

Phone: (502) 584-1135

Facsimile: (502) 561-0442

jhiggins@middletonlaw.com

rjt@middletonlaw.com

bshumaker@middletonlaw.com

-and-

J. Aron Carnahan (Ill. Bar No. 6242642)

HUSCH BLACKWELL, LLP

120 South Riverside – 22nd Floor

Chicago, IL 60606

Phone: (312) 655-1500

Fax: (312) 655-1501

Aron.carnahan@huschblackwell.com

ATTORNEYS FOR PLAINTIFFS

SURGIBIT IP HOLDINGS PTY, LIMITED.

ORTHOPEDIC INNOVATION PTY, LTD.

Certificate of Service

The undersigned certifies that that this document is being filed on this 19th day of November, 2014 in accordance with the procedures in effect for the Electronic Court Filing (ECF) system in effect to the U.S. District Court for the Northern District of Illinois which will provide a copy of same to all persons registered to receive same. In addition, the undersigned certifies that a copy of this document was served by e-mail upon Rodney Baker, attorney for Defendant Liam Patrick Ellis by sending a copy to justice@dtllegal.com as well as liam@cingular-ortho.com this 19th day of November, 2014.

s/James R. Higgins, Jr.
One of counsel for Plaintiffs